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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/621,670	07/24/2000	Mark Ashby	29985/05-112A	6902
7590 04/17/2008				
Thomas A. Miller Miller, Matthias & Hull, LLP One North Franklin Street Suite 2350 Chicago, IL 60606			EXAMINER IZAQUIRRE, ISMAEL	
			ART UNIT 3765	PAPER NUMBER
			MAIL DATE 04/17/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/621,670

**Applicant(s)**

ASHBY ET AL.

**Examiner**

Ismael Izaguirre

**Art Unit**

3765

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 and 44-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-41 and 44-48 is/are allowed.
- 6) ☒ Claim(s) 1-3.5 and 13 is/are rejected.
- 7) ☒ Claim(s) 4 and 6-12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-884)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

The examiner is appreciative of the changes made to the language of the claims. These have been duly noted and considered.

### **CLAIMS**

#### **Summary**

Claims 1, 14, 25, 38, 44 and 45 are the independent claims under consideration in this Office action.

Claims 2-13, 15-24, 26-37, 39-41 and 46-48 are the dependent claims under consideration in this Office action.

#### **Claim Rejections - 35 U.S.C. § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 13 are rejected under 35 U.S.C. § 102(b) as being anticipated by Klein et al. (5,792,152).

Klein et al. teach a device for suturing internal puncture sites which is "useful for inhibiting blood loss out of a puncture site in a blood vessel wall" by providing an obstruction to the puncture site and by providing sutures thereat. Klein et al. teach including a vent tube 12 including a tubular shaft or lumen 26 having a proximal end adjacent a guide tube yoke 74 (figure 2) and a distal end (within transition piece 32), the

lumen extends from the proximal end to the distal end and is in fluid communication with a lumen 26 extending longitudinally between the proximal end and the distal end of a control head 14. The control head is provided on the distal end of the vent tube shaft, the control head including a proximal end portion (located connected to transition piece 32) and a distal end portion having a distal port 50 for the passage of a guide wire GW, a central portion between the proximal end portion and the distal end portion includes a constant diameter. The control head further being taught as including a tapered distal end at 50 and a tapered proximal end at 32 and a blood aperture 30 for indicating a flow of blood and a positioning of the control head.

Claims 1-3 are rejected under 35 U.S.C. § 102(b) as being anticipated by Hirsch et al. (2,828,744).

Hirsch et al. teach a device for use in puncturing and accessing a blood vessel which is "useful for inhibiting blood loss out of a puncture site in a blood vessel wall" by providing an obstruction to the puncture site and by a stylet 28 which inhibits blood loss while within the needle. Hirsch et al. teach including a vent tube 18 including a tubular shaft or lumen having a proximal end adjacent the head 30 of the stylet and a distal end (at 42), the lumen extends from the proximal end to the distal end and is in fluid communication with a lumen 16 extending longitudinally between the proximal end and the distal end of a control head 12. The control head is provided on the distal end of the vent tube shaft, the control head including a proximal end portion (at 42) and a distal end portion having a distal port end 14, a central portion between the proximal end

portion and the distal end portion includes a constant diameter. The control head further being taught as including a tapered distal end at 14 and a tapered proximal end at 42.

#### **ALLOWABLE SUBJECT MATTER**

Claims 14-41 and 44-48 are allowable over the prior art of record.

Claims 4 and 6-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### **INQUIRIES**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ismael Izaguirre whose telephone number is (571) 272-4987. The examiner can normally be reached on M-F (8:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ismael Izaguirre/  
Primary Examiner, Art Unit 3765